

404(g) Compensatory Mitigation Background

Recommendations from State letters

Arizona DEQ recommends that EPA clarify whether a state must establish its own compensatory mitigation program in order to assume the CWA 404 program. For example, an already established, Corps-enabled ILF program might be able to provide mitigation credits for a state-issued permit.

Minnesota believes the new rule should address the applicability of and interaction with the Compensatory Mitigation Rule.

- Clarify the role of the Corps in the review and approval of mitigation banks and ILF projects. MN views the establishment and oversight of mitigation sites as an inseparable part of a permitting program that should be the responsibility of the state if it can demonstrate, to EPA's satisfaction, that the program as a whole provides an equivalent level of protection for aquatic resources. In a state like Minnesota with a significant number of wetland banks, a scenario where the state assumes permitting approval but not the responsibility for review and approval of wetland banks would complicate decision making processes and retain a system of redundant state and federal mitigation bank reviews. Dual decision authority by Corps and state on the same project could create complications, as the state's decision would already convey Section 404 authority.
- For state-sponsored ILF programs, we acknowledge that federal oversight is required to satisfy the requirements in the Federal Mitigation Rule, but we encourage EPA to clarify that the oversight would be provided by the EPA (as opposed to the Corps in the absence of an approved program).
- EPA should also clarify if the Interagency Review Team (IRT) exists under a state-assumed program and, if so, how it would function, including for the review of banking and ILF projects. As we understand it, if the IRT exists under a state-assumed program, the state would chair it for these projects as well as for activities proposing wetland impacts.

Analytic Blueprint

- **Issue #4:** **Ex. 5 Deliberative Process (DP)**
- ## Ex. 5 Deliberative Process (DP)

Questions included but are not limited to:

Ex. 5 Deliberative Process (DP)

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